IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITIONS NO. 116, 199 OF 2001 AND 58/2002.

WRIT PETITION NO. 116/2001

Shri Subash G. Narvekar,
Ex-Chairperson, Mapusa Municipal Council,
Mapusa, Goa ..... Petitioner.

V/s.

1. State of Goa,
through the Chief Secretary,
with his office at Secretariat,
Panaji, Goa.

2. The Goa Public Men's Corruption
(Investigation and Inquiries) Commission,
Serra Building, Near All India Radio,
Altinho, Panaji, Goa.
Through its Secretary,

3. Shri C.F. Alvares,
Member, The Goa Public Men's Corruption
(Investigation and Inquiries) Commission,
Serra Building, Near All India Radio,
Altinho, Panaji, Goa.

4. Shri G.U. Bhobe,
Member, The Goa Public Men's Corruption
(Investigation and Inquiries) Commission,
Serra Building, Near All India Radio,
Altinho, Panaji, Goa.

5. Shri Ramesh Phadke, major of age,
Resident of Mapusa, Goa.

6. Shri Prakash Naik, major of age,
resident of Mapusa, Goa.

7. Shri Rama Mapsekar,
major of age,
resident of Khorlim, Mapusa, Goa. ..... Respondents.

Mr. S.D. Lotlikar, Sr. Advocate with Shreya Naik, Advocate for the petitioner.

Mr. M.B. D'Costa, Advocate General with Mr. P.A. Kamat, Govt. Advocate for respondents No.1 and 2.

WRIT PETITION NO. 199/2001

Shri Francisco C.J. A. D'Souza,
r/o. Mapusa, Bardez, Goa. ..... Petitioner.

V/s.

1. The Goa Public Men's Corruption
(Investigation and Inquiries) Commission,
having its Office at Serra Building,
Near All India Radio,
Altinho, Panaji, Goa.

2. State of Goa,
through the Chief Secretary,
having office at Secretariat,
Panaji, Goa.

3. Shri Subash G. Narvekar,
resident of Duler, Mapusa, Goa. ..... Respondents.

Mr. Nitin Sardessai, Advocate for the petitioner.

Mr. M.B. D'Costa, Advocate General with Mr. J.A. Lobo, Addl Govt. Advocate for respondent Nos. 1 and 2.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. R.S. Sardessai, Advocate for respondent No.3.

WRIT PETITION NO. 58/2002

Shri Subhash Dias,
major, resident of Talaulim, Goa. ..... Petitioner.

V/s.

1. State of Goa,
through the Chief Secretary,
with his office at Secretariat,
Panaji, Goa.

2. The Goa Public Men's Corruption
(Investigation and Inquiries) Commission,
Having Office at Serra Building,
Near All India Radio,
Altinho, Panaji, Goa.

3. Shri C.F. Alvares,
Member, The Goa Public Men's Corruption
(Investigation and Inquiries) Commission,
Having office at Serra Building,
Near All India Radio,
Altinho, Panaji, Goa.

4. Shri G.U. Bhobe,
Member, The Goa Public Men's Corruption
(Investigation and Inquiries) Commission,
Having Office at Serra Building,
Near All India Radio,
Altinho, Panaji, Goa.

5. Shri Lington Monteiro,
major, resident of Bambolim, Curca,
Near the Church, G.M.C. Complex,
Bambolim, Goa.

Mr. S.D. Lotlikar, Sr. Advocate with Ms K. Sambhari, Advocate for the petitioner.

Mr. M.B. D'Costa, Advocate General with Mr. P.A. Kamat, Govt. Advocate for respondents No.1 and 2.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving Judgment :
11th April, 2005.

Date of pronouncing Judgment :
3rd May, 2005.

ORAL JUDGMENT : (Per LAVANDE, J.)

All these petitions can be disposed of by common Judgment since common question of law is involved in all these three petitions.

2. The relevant facts in each of the petitions are as under :

WRIT PETITION NO.116/2001:

The petitioner, at the relevant time, was the Chairman of the Mapusa Municipal Council. Pursuant to the Judgment dated 8th June, 1999, passed by this Court directing the State of Goa to refer the complaint to the Goa Public Men's Corruption (investigation and Inquiries) Commission (hereinafter, referred to as `the Commission'), the Government referred the complaint to the Commission by way of reference under Section 9(2) of the Goa Pubic Men's Corruption (Investigation and Inquiries) Act, 1988 (hereinafter, referred to as `the Act'). Before the Commission, the petitioner raised several preliminary objections. However, the Commission was pleased to reject the same and directed preliminary investigation. Consequently, preliminary investigation into the matter as per the procedure laid down under the Act was conducted and statements of several persons were recorded. By Order dated 15.12.1999, the Commission held that, prima facie, it was established that the petitioner had abused his position as Public Man

and willfully acted in contravention of the Rules and Regulations and the applicable law in order to favour a contractor and also committed act of favouritism in the discharge of his official functions. The Chairman of the Commission Dr. G.F. Couto, retired on 16.3.2000, and, thereafter, two members, namely Shri C.F. Alvares and Shri G.U. Bhobe proceeded with the detailed investigation and examined six witnesses. On 13.9.2000, the said two Members made a Report under Section 17(1) of the act and made certain recommendations to the Government of Goa. In the said report, the said Members held that the petitioner has abused his position as Public Man willfully in contravention of law and established procedure and that he had shown favour to the contractor and caused deliberate loss to the Municipal fund to the extent of Rs.6,00,000/- and had committed acts of Corruption envisaged under Section 3(C) and 3(D) of the Act. The said two Members, inter alia, also recommended to the Government that the said amount of Rs.6,00,000/- should be recovered from the petitioner. On 10.10.2000, the petition was filed challenging the report and recommendations of the Commission dated 13.9.2000. This Court issued Rule on 6.6.2001 and granted interim relief to the petitioner.

WRIT PETITION NO. 199/2001

The petitioner was Chairperson of the Mapusa Municipal Council and, as such, a Public Man, at the relevant time. In January,

2001, respondent No.3 filed complaint before the Commission. At the relevant time, the Commission consisted of only two Members, viz. Shri C.F. Alvares and Shri G.U. Bhobe. Since the Chairman Dr. G.F. Couto had retired on 16.3.2000, the said two Members held preliminary inquiry in the absence of Chairman Dr. G.F. Couto, who had retired as Chairman in March, 2000. Thereafter on 28.5.2001, the said two Members passed an order holding that prima facie case was made out against the petitioner and issued summons for appearance on 12.6.2001 for the purpose of detailed inquiry. On 11.6.2001, the petitioner filed the present petition, challenging notice/summons dated 28.5.2001 and seeking quashing of proceedings before the Commission in Case No.1/2001. This Court granted Rule and an interim relief on 4.7.2001.

WRIT PETITION NO. 58/2002.

The petitioner was Panchayat Member of the Village Panchayat of Curca-Bambolimn-Talaulim, at the relevant time and as such, a Public Man under the Act. On 17.12.1997, a complaint was filed by respondent No.5 to the Director of Panchayats alleging acts of corruption by the petitioner during his tenure as Sarpanch of the Village Panchayat of Curca-Bambolim-Talaulim. On 2.8.1999, the Director of Panchayats, after conducting preliminary inquiry, referred the matter under sub-section (2) of Section 9 to the Commission for further investigation, as the matter involved allegations of corruption against a

Public Man and on 14.3.2000, the Commission after examining seven witnesses and on going through the audit report and various documents, held that the matter required detailed inquiry and ordered a detailed investigation under Section 13(2) of the Act, the Commission fixed the matter for detailed investigation which was thereafter held. In the course of the detailed investigation, seven witnesses were examined and on 2.4.2001, Mr. C.F. Alvares and Mr. G.U. Bhobe, the two Members of the Commission made a report purporting to be under Section 17(1) of the Act and made recommendations in the matter to the Government of Goa. The petition was filed on 11.2.2002, challenging the said report which was admitted and interim relief was granted by this Court on 19.2.2002.

3. Since the challenge in the all the three petitions is to the reports and recommendations of the Commission under the Act, it would be appropriate to refer to the object of the Act and the relevant provisions of the Act before dealing with the challenges made in each of the petitions. The Act was enacted to make provision for constitution of Commission for investigation of and inquiry into complaints against public men and for matters connected therewith. The Act was passed by the Legislative Assembly of Goa on 28.12.1988 and was assented to by the President on 20.8.1991 and was published in the Official Gazette dated 3.9.1999. However, the Commission contemplated under Section

4 of the Act was constituted in January, 1997. The Commission consisted of Dr G.F. Couto, Retired Judge of Bombay High Court, as Chairman, Shri C.F. Alvares, and Shri G.U. Bhobe, as the Members. Dr. G.F. Couto retired on 16.3.2000 and, thereafter, the other two members continued to function. On 16.10.2003, by Notification of the same date, the Government of Goa rescinded Notification dated 9.1.1997, constituting the Commission, thereby winding up the said Commission. At this stage, it would be appropriate to reproduce Section 2(a) and (b), and Sections 4, 9 and 17 of the Act. They read as under :

> 2. *Definitions. - In this Act, unless the context otherwise requires;-*
>
> (a) "Commission" means a Commission constituted under Section 4:
>
> (b) "complaint" means a complaint alleging that a public man has committed corruption;
>
> 4. *Constitution of Commission.* - (1) For the purpose of conducting investigation and inquiries in accordance with provisions of this Act, the Governor shall constitute a Commission consisting of three members.
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> (2) The Governor shall, on the advice tendered by the Chief Minister in consultation with the Senior Judge of High Court of Judicature at Bombay, Panaji Bench and the leader of Opposition in the Goa Legislative Assembly, appoint the members of the Commission and one of such members who holds or has held office as Judge of the Supreme Court or of

the High Court referred to in sub-section (2), to be the Chairman thereof.

(3) One of the persons to be appointed as member of the Commission shall be one who holds or has held office as Judge of the Supreme Court or that of High Court and the other persons to be appointed as members of the Commission shall be persons qualified to be appointed as a Judge of the High Court.

(4) Every matter to be decided by the Commission shall be decided in accordance with the opinion of the majority of the members.

(5) A person appointed as member of the Commission shall, before he enters his office, make and subscribe before the Governor or some person appointed in that behalf by him, oath or affirmation according to the Form set out hereunder :-

> (a) "I, A.B. ... having been appointed as Member of the Commission under the Goa Public Men's Corruption (Investigation and Inquiries) Act, 1988, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will", and
>
> (b) "I, ... do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a member of the Commission except as may be required for due discharge of my duties as such

member".

(6)The Chairman shall :-

(a) preside over the sittings of the Commission; and

(b) in consultation with the other members exercises administrative control over the Secretary and other officers and employees of the Commission.

9. Matters which may be investigated by Commission: - (1) Subject to the provisions of this Act, the Commission may investigate any complaint presented to it under section 11.

(2) Notwithstanding anything contained in this Act, where any allegation of corruption against any public man comes to the knowledge or is brought to the notice of the Government, they may, if satisfied that it is necessary in the public interest so to do, by order in writing refer such allegation of corruption to the Commission for investigation and the Commission shall investigate the same as if it were a complaint presented under this Act.

(3) For the purposes of this Act, the person who made the allegation of corruption referred to in sub-section (2) shall deemed to be the complaint.

17. *Report of Commission.* - (1) if, after investigation of any complaint, the Commission is satisfied that all or any of the allegations made in the complaint have or has been substantiated either wholly

or partly, it shall, by report in writing, communicate its findings and recommendations along with the relevant documents, materials and other evidence to the competent authority and a copy of the report regarding the findings and recommendations to the Government.

(2) The competent authority shall examine the report forwarded to it under sub-section (1) and within three months of the date of receipt of the report, intimate or cause to be intimate to the Commission the action taken or proposed to be taken on the basis of the report.

(3) If the Commission is satisfied with the action taken, or proposed to be taken on its recommendations or findings referred to in sub-section (1), it shall close the case under information to the complainant, the public man and the competent authority concerned; but where it is not so satisfied and if it considers that the case so deserves, it may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant.

(4) The Commission shall present annually a consolidated report on the performance of its functions under this Act to the Governor.

(5) On receipt of the special report under sub-section (3), or the annual report under sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the Legislative Assembly of Goa.

(6) The Commission may at its discretion make available, from time to time, the substance of

> cases closed or otherwise disposed of by it which may appear to it to be of general, public, academic or professional interest in such manner and to such persons as may be prescribed.

Section 12(1) of the Act provides that on receipt of a complaint under Section 11, the Commission shall, in a case not falling under Section 10, scrutinise the same and shall furnish a copy of the complaint to the public man and also give the complainant and the public man concerned an opportunity of being heard in the matter. Sub-section (3) of Section 12 provides that the procedure for conducting any such investigation shall be such as the Commission deems appropriate in the circumstances of the case. Section 13 of the Act, inter alia, provides that if, after the preliminary investigation under Section 12, the Commission is of the opinion that there is no prima facie case against the public man, it shall record a finding to that effect and report the finding to the competent authority stating the reasons for such finding and proceed to make a detailed investigation and in case the Commission comes to the conclusion that the complaint is frivolous or vexatious or is not made in good faith, or there is no sufficient grounds for proceeding further, or other remedies are available to the complainant, the Commission has to record its findings stating the reasons thereof and communicate the same to the public man and to the complainant and the competent authority.

4. Mr. Lotlikar, learned Senior Counsel appearing on behalf of the petitioners in Writ Petitions No.116/2001 and 58/2002 submitted that the Chairman of the Commission Dr. G.F. Couto having retired on 16.3.2000, the remaining two Members had no jurisdiction to proceed with the investigation under the Act. Relying upon Section 2(a) and Section 4 of the Act, the learned Senior Counsel submitted that only the commission which is duly constituted under Section 4 of the Act, can proceed to hold the investigation under the Act. According to the learned Counsel, the investigation has to be carried out by the Commission constituting the Chairman and the two Members and the same is evident from sub-section(1), (4) and (6) of Section 4 of the Act. According to the learned Counsel, the said section makes it mandatory for the Chairman to preside over the sittings of the Commission and, therefore, in the absence of the Chairman, there is no commission contemplated under the Act. It has been further submitted that since sub-section (4) of Section 4 provides that every matter that has to be decided by the Commission, shall be decided in accordance with the opinion of the majority of the members, the Commission has necessarily to be of three Members since in the event of two Members constituting the Commission, there may not be opinion of majority of the members in case the two members dissent. It has been further submitted that having regard to the fact that one of the Members of the Commission who holds or has

held Post of the Judge of Supreme Court or of the High Court can be appointed as the Chairman, it is inconceivable that in the absence of Chairman, the Commission can be said to have been duly constituted. According to the learned Counsel, after Justice G.F. Couto, Chairman of the Commission retired on 16.5.2000, there was no Commission duly constituted under the Act, and therefore, the said two Members had no jurisdiction to proceed to hold investigation under the Act. The learned Counsel further submitted that the reports submitted by the said two Members in two writ petitions under Section 17 of the Act were admittedly after 16.3.2000 and, therefore, the reports submitted by the said two Members were not reports submitted by the Commission validly constituted under Section 4 of the Act and, therefore, were without any authority. According to the learned Counsel, there is no provision either in the Act or in the Rules framed thereunder dealing with the situation arising out of the retirement of any of the Members for filling up casual or permanent vacancy. According to the learned Counsel, the investigation under the Act could be carried out by the Commission consisting of the Chairman and two Members and it is the joint function of the Commission consisting of three members to carry out the investigation under the Act before submitting the report under Section 17 of the Act. The learned Counsel relied upon the Judgment of Seven Judge Bench of the Apex Court reported in ***The United Commercial Bank Ltd. v. Their Workmen*** (AIR 1951 SC 230). Placing reliance on

paragraph 15 of the said Judgment, the learned Counsel submitted that the ratio of the said Judgment is squarely applicable in the present case. It is been submitted by the learned Counsel that upon submitting the reports under Section 17 of the Act, the Competent Authority is required to examine the report and within three months of the date of receipt of the report is required to intimate to the Commission the action taken or proposed to be taken on the basis of the report. According to the learned Counsel, upon submission of the adverse report against the public man under Section 17 of the Act certain civil consequences follow and, therefore, the public man has locus to challenge the report submitted under Section 17 of the Act on the ground that the report has not been submitted by the Commission validly constituted under the Act.

5. Mr. Sardessai, learned Counsel appearing for the petitioner in Writ Petition No. 199/2001 submitted that he adopts in toto the submissions made by Mr. Lotlikar. The learned Counsel further submitted that having regard to the scheme of the Act, a Sitting Judge or retired Judge of Supreme Court or of the High Court must act as Chairman of the Commission, for conducting investigation under the Act and the Act clearly envisages the Commission consisting of three Members, out of which, one Member has to function as Chairman who has essentially to be a sitting or retired Judge of the Supreme Court or of the High Court. According to the learned Counsel, in the event the said

two members in the absence of the Chairman are permitted to constitute the Commission, the same would defeat the very purpose of the Act since the Act provides that the Commission shall be chaired by a sitting or retired Judge of the High Court or the Supreme Court and, therefore, it is inconceivable that in the absence of Chairman, it can be said that the Commission is validly constituted.

6. Per contra, Mr. M.B. D'Costa, learned Advocate General appearing for respondents No.1 and 2 submitted that the reports submitted and recommendations made by the said two Members under Section 17 of the Act cannot be said to be without jurisdiction since the said two members could constitute the Commission under the Act and the absence of the Chairman did not vitiate the reports submitted or recommendations made by the said two Members who constituted the Commission. According to the learned Advocate General, the petitioners had not taken objection before the said two Members about validity of the constitution of the Commission and, therefore, now they cannot be permitted to turn round and challenge the jurisdiction on the ground that the Commission was not validly constituted. In support of his submissions the learned Advocate General placed reliance on the Judgments in the cases of ***G.T. Venkattaswami Reddy v. Regional Transport Authority, Bangalore and anr.*** (AIR 1966 Mysore 55). The learned Advocate General further relied upon Judgment of the Apex

Court in ***Gulzari Lal Agarwal vs. Accounts Officer, (*** (1996 10 SCC 590) and submitted that the ratio of the said Judgment is applicable in the present case and, therefore, the petitions deserve to be dismissed. According to the learned Advocate General the absence of the Chairman does not invalidate the actions taken by the Commission and, therefore, the reports made by the Commission consisting of two Members cannot be said to be illegal or void.

7. We have considered the rival submissions made by the learned Counsel appearing for the petitioners and the learned Advocate General. In terms of Section 2(a) of the Act, Commission means a Commission constituted under Section 4. In terms of Section 4 of the Act, the Commission consists of three members and one of such members has to act as the Chairman thereof. The Chairman has to be essentially the one who holds or has held office as Judge of the Supreme Court or that of High Court. Sub-section (4) of Section 4 provides that every matter to be decided by the Commission shall be decided in accordance with the opinion of the majority of the members. A bare reading of Section 2(a) and Section 4 of the Act clearly reveals that the Commission has to be essentially of three members, out of which one of the members who has to act as the Chairman, must hold or must have held office as Judge of the Supreme Court or that of High Court. Moreover, in terms of sub-section (6), every sitting of the Commission has to be presided by the

Chairman in the absence of whom there could not be a valid sitting. Therefore, we find considerable merit in the submission of the learned Counsel for the petitioners that a Commission cannot be constituted by two members and that too without the Chairman. In the present case, the term of Dr. G.F. Couto, who was acting as the Chairman of the Commission expired on 16.3.2000 and, therefore, in our opinion, there was no Commission validly constituted after retirement of Dr. G.F. Couto. In our opinion, the said two members, namely Mr. C.F. Alvares and Mr. G.U. Bhobe could not constitute the Commission as contemplated under Sections 2 and 4 of the Act and, therefore, the said two members had no jurisdiction to proceed with the investigations under the Act. We also find considerable merit in the submission of Mr. Lotlikar that having regard to sub-section (4) of Section 4 of the Act the Commission has to be of three members since in the event two members differ, the matter has to be decided in accordance with the opinion of the majority of the members. In case, it is held that two members can validly constitute the Commission, a situation may arise in which two members differ in a matter and in such an eventuality, it will result in a deadlock. Mr. Lotlikar is justified in placing reliance upon the Judgment of the Apex Court in ***The United Commercial Bank Ltd. v. Their Workmen's*** case (supra). In the said Seven Judge Judgment of the Apex Court, the majority Judgment has held that a Tribunal constituted under Section 8 of the Industrial Disputes Act, cannot function in the event one member

ceases to be the member of the Tribunal. It would be appropriate to quote Section 8 of the Industrial Disputes Act which came up for consideration before the Apex Court in the said Judgment. Section 8 reads as under :

> "8. (1) "If the services of the chairman of a Board or of the chairman or other member of a Ct. or Tribunal cease to be available at any time the appropriate Govt. shall, in the case of a chairman, & may in the case of any other member, appoint another independent person to fill the vacancy & the proceedings shall be continued before the Board. Ct. or Tribunal so reconstituted.
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> (2) Where a Ct. or Tribunal consists of one person only & his services cease to be available the appropriate Govt. shall appoint another independent person in his place, & proceedings shall be continued before the person so appointed.
>
> (3) Where the services of any member of a Board other than the chairman have ceased to be available, the appropriate Govt. shall appoint in the manner specified in sub-s.(3), S. 5 another person to take his place, & the proceedings shall be continued before the Board so reconstituted."

In the said case, one of the members, viz. Mr. Chandrasekhara Aiyar had ceased to be the Member of the Tribunal and certain Awards made by the other two members of the Tribunal, namely Mr. Sen and Mr. Mazumdar were challenged on the ground that they were made by the Tribunal not validly constituted in terms of Section 8 of the Industrial

Disputes Act. The Apex Court by majority Judgment upheld the challenge and in paragraph 15 of the Judgment, the Apex Court held thus :

> "... If a vacancy had occurred they had to make the appointment or state that they will not do so. They cannot defer their decision on the question of filing up the vacancy & in the interval direct the remaining members to go on with the reference. That seems to us to be the correct position because the fundamental basis on which the tribunal has to do its work is that all members must sit & take part in its proceedings jointly. If a member was casually or temporarily absent owing to illness, the remaining members cannot have the power to proceed with the reference in the name of the tribunal, having regard to the absence of any provision like S.5(4) or 6(3) in respect of the tribunal. The Govt. had notified the constitution of this tribunal by the two notifications summarized in the earlier part of the judgment & thereby had constituted the tribunal to consist of three members & those three were Mr. Sen, Chairman, Mr. Mazumdar & Mr. Chandrasekhara Aiyar. Proceeding with the adjudication, in the absence of one, undermines the basic principle of the joint work & responsibility of the Tribunal & of all its members to make the award."

8. In our opinion, the ratio of the Judgment in the case of ***The United Commercial Bank Ltd. v. Their Workmen's*** (supra), is applicable in the present writ petitions. The Act as well as the Rules framed thereunder do not provide that in the absence of one member, the Commission can function under the Act. As stated above, after retirement of Dr. G.F. Couto, the Government chose not to appoint any Chairman and the proceedings in all these three petitions were continued by the said two members. In our opinion, in the absence of Chairman, the said two Members had no jurisdiction to proceed with the investigations against the petitioners and, therefore, the said two members had obviously no jurisdiction to submit the reports and/or make any recommendations to the Government.

9. In so far as the submission of the learned Advocate General that since the petitioners had not taken any objection before the two members about the validity of the constitution of the commission, they cannot be now permitted to challenge the jurisdiction on the ground that the Commission was not validly constituted is concerned, we do not find any merit in the said submission. Having regard to the provisions of the Act to which we have already made elaborate reference, there was no commission duly constituted under the Act and, therefore, the fact that no objection before the said two members about the validity of the constitution of the Commission was taken, cannot be taken as fatal to

the maintainability of these petitions since, in our opinion, there was no Commission validly constituted after retirement of Dr. G.F. Couto as the Chairman and, therefore, the investigations done, as well as the proceedings before the said two members, thereafter, were without jurisdiction. Therefore, we are unable to accept the submission of the learned Advocate General that in the absence of any objection having been taken before the said two members, the petitioners are not entitled to challenge the reports as well as the recommendations made by the said two members. In our opinion, the reports submitted by the said two members cannot be construed as the reports by the Commission, duly constituted and, as such, the said reports and the recommendations are without any authority of law.

10. In so far as the ratio laid down in the case of ***G.T. Venkataswami Reddy v. Regional Transport Authority, Bangalore and ors. (Supra),*** is concerned, the same is clearly not applicable since the same was in respect of defect in constitution of the Regional Transport Authority. In the said case, the petitioner who was a state carriage operator, inter alia, had challenged the refusal of the permit to him by the Regional Transport Authority on the ground that it was not validly constituted. In the said case, the Mysore High Court had observed that the petitioner having failed to get the permit, could not be permitted to challenge the jurisdiction of the Regional Transport Authority on the

ground that it was not validly constituted. In the petitions before us, the petitioner were not seeking any relief from the Commission, but on the contrary, the investigations were being conducted in respect of complaints of corruption against them by the said two members who did not constitute the Commission in terms of the Act. The ratio of the said Judgment, therefore, is not applicable in the present writ petitions.

11. In so far as the Judgment in the case of ***Gulzari Lal Agarwal's case (supra),*** upon which reliance has been placed by the learned Advocate General is concerned, the Apex Court has held that the order delivered by State Commission under The Consumer Protection Act, 1986 even in the absence of the Chairman is valid. In the said Judgment, the Apex Court set aside the Order of the National Commission holding that the impugned Order which was passed by the State Commission consisting of only two members of the State Commission in the absence of the President was contrary to Section 14 (2), read with Section 18 of the Consumer Protection Act, 1986. The Apex Court while setting aside the Order of the National Commission, primarily relied upon Section 29A of the Act and Sub-Rules (9) and (10) of Rule 6 of the West Bengal Consumer Protection Rules framed under the Consumer Protection Act by the State of West Bengal. The said sub-Rules (9) and (10) of Rule 6, read as under :

> " 6.(9) Where any such vacancy occurs in the office of the President of the State Commission the seniormost (in order of appointment) member holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the State Commission.
>
> 6.(10) When the President of the State Commission is unable to discharge his functions owing to absence, illness or any other cause, the seniormost (in order of appointment) member of the State Commission shall discharge the functions of the President until the day on which the President resumes the charge of the functions."

The Apex Court observed that there was no challenge to the validity of the said Rules and they were holding the field and, therefore the Order of the State Commission holding that the Order passed by the State Commission in the absence of the Chairman was without jurisdiction, cannot be sustained. The Apex Court also relied upon Section 29A of the Consumer Protection Act in support of its finding that the order passed by the National Commission could not be sustained. At this stage, it would be appropriate to quote Section 29 of the Consumer Protection Act, which reads as under:

> "29-A. V*acancies or defects in appointment not to invalidate orders.* - No act or proceeding of the

> District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof."

12. It is pertinent to note that in the Act which falls for our consideration, there is no provision similar to Section 29 of the Consumer Protection Act or Rule 6(9) and (10)- of the Rules. Therefore, we are unable to place reliance on the Judgment of ***Gulzari Lal Agarwal's case (supra),*** in support of the submission made by the learned Advocate General that even in the absence of the Chairman, said two members the Commission had jurisdiction to hold investigations against the petitioners and make reports. As stated above, the Judgment in the case of ***Gulzari Lal Agarwal's (supra),*** was given in the light of Section 29-A of the Consumer Protection Act and Rule 6(9) and 6(10) of the West Bengal Consumer Protection Rules, 1987.

13. We also find considerable merit in the submission of Mr. Lotlikar that upon submission of the adverse report against the public man under Section 17 of the Act, certain civil consequences follow and, therefore, the petitioners are entitled to challenge the reports submitted and the proceedings taken by the said two members who had no jurisdiction to conduct investigations against the petitioners.

14. In view of the above discussion, the petitions deserve to be allowed and are accordingly allowed. Consequently, the reports submitted and the recommendations made by the said two members against the petitioners in each of the petitions are quashed and set aside. Rule is made absolute in the aforesaid terms in all three petitions. Having regard to the facts and circumstances of the case, the parties to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.